

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013070599

ORDER DENYING DISTRICT'S
MOTION FOR SANCTIONS

Student filed his original complaint in this case on July 12, 2013, naming the San Ramon Valley Unified School District (District). Student alleged in his first issue that the District had failed to create or offer Student an individualized educational program (IEP) that met his unique needs in the IEP the District developed for Student on May 5, 2011. Student further alleged that the District had failed to convene an IEP meeting for Student since June 2011.

On September 23, 2013, the District filed a motion to dismiss all of Student's issues concerning allegations occurring prior to July 12, 2011, based upon the fact that those issues fell outside the applicable two-year statute of limitations. Student opposed the motion to dismiss but did not cite to any case law or statutory authority in support of his position that the statute of limitations did not apply.

The undersigned Administrative Law Judge (ALJ) convened a prehearing conference in this matter on September 30, 2013. At that time she informed the parties that she was inclined to grant the District's motion to dismiss. However, she gave Student leave to file additional briefing to specifically provide supporting authority for Student's position that the alleged deficiencies in the District's May 5, 2011 IEP were continuing violations and therefore not subject to dismissal as being outside of the statute of limitations. The ALJ gave Student until October 3, 2013, to file the additional briefing if he chose to do so.

Rather than file additional briefing, Student instead filed an amended complaint on October 1, 2013. Student's amended complaint deletes any specific reference to the District's May 5, 2011 offer of a free appropriate public education (FAPE). Rather, Student re-worded his issue to allege as follows in his Issue One: "The District denied [Student] a FAPE by failing to tailor an appropriate educational program to meet his individual and unique needs and violated his procedural rights by failing to offer FAPE from July 12, 2011 for the 2011-2012 school year."

On October 3, 2013, the District filed a pleading in which it opposed Student's amended complaint and moved to dismiss Student's new Issue One if the Office of Administrative Hearings (OAH) granted Student leave to amend. The District also moved for sanctions against Student, alleging that Student's amended complaint was filed in bad faith, was frivolous, and was filed to delay the proceedings.

OAH granted Student leave to amend his complaint in an Order dated October 4, 2013. On October 7, 2013, OAH granted in part and denied in part the District's motion to dismiss Issue One of Student's amended complaint. Still pending is the District's motion for sanctions.

APPLICABLE LAW AND DISCUSSION

In certain circumstances, an administrative law judge (ALJ) presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 ["Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge."].) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

Expenses may be ordered to be reimbursed either to OAH or to another party. With approval from the General Counsel of the California Department of Education, the ALJ presiding over the hearing may "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel" to OAH (as the successor to the California Special Education Hearing Office) as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Cal. Code. Regs., tit. 5, § 3088, subds. (a) & (e); see Gov. Code, § 11455.30, subd. (a).) An ALJ presiding over a hearing may, without first obtaining approval from the California Department of Education, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) Filing a complaint without serving it on the other party is not within the definition of "actions or tactics." (*Ibid.*) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

In this case, the District contends that sanctions against Student are warranted because Student filed an amended complaint rather than filing additional briefing in support of Student's position that Issue One of his original complaint should not be dismissed as being beyond the statute of limitations. The District asserts that Student's amended complaint is frivolous, in bad faith, and was filed merely to delay proceedings in this case.

OAH granted Student leave to amend his complaint. Student's filing of his amended complaint is therefore not frivolous. Furthermore, the District has provided no evidence that Student's purpose in filing his amended complaint was to delay the case from proceeding. The parties jointly moved for a continuance on August 5, 2013, which OAH granted shortly afterward. No other continuances have been requested. Student's amended complaint basically changes Student's theory of his case as it relates to Issue One of the complaint. There is no evidence that Student's intent in filing the amended complaint was for any reason other than raising a new theory in order for Student to avoid issues with the statute of limitations. While the District may not agree with Student's new legal theory, the District has failed to demonstrate that the theory is frivolous or in bad faith.

ORDER

1. The District's motion for sanctions/expenses is denied.

Dated: October 8, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings